

STORAGE NAME: h0433s1a.grr
DATE: March 10, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: CS/HB 433

RELATING TO: Pharmacists/Licensure by Endorsement

SPONSOR(S): Committee on Health Care Licensing & Regulation and Representatives Putnam, Morroni and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 11 NAYS 2
 - (2) GOVERNMENTAL RULES & REGULATIONS YEAS 7 NAYS 0
 - (3) FINANCE & TAXATION
 - (4) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (5)
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I. SUMMARY:

CS/HB 433 creates licensure by endorsement requirements for a pharmacist who is licensed in another jurisdiction or who has met certain other requirements to practice pharmacy in Florida without having to take the national licensure examination at the time of application. It provides that applicants must have passed the national examination (NABPLEX), or a similar national examination, not more than 15 years prior to the date of the application. Currently, Florida and California are the only states that do not provide for licensure by endorsement.

The applicant must submit proof of the "active licensed practice of pharmacy" in two of the immediately preceding five years or evidence of successful completion of either board-approved postgraduate training or a board-approved clinical competency examination within the year preceding application. Also, the applicant must have obtained a passing score on the pharmacy jurisprudence portions of the licensure examination, as required by board rule.

It defines the "active licensed practice of pharmacy" as the practice of pharmacy by pharmacists, including those employed by any governmental entity in community or public health, or has completed an internship meeting the requirements of s. 465.007(1)(c), F.S., within the two years preceding application.

The bill prohibits the Department of Health from issuing a license to any applicant who is being investigated for acts that would violate regulations applicable to Florida-licensed pharmacists until the investigation is complete, or to any pharmacist whose license has been suspended or revoked in another state, or to any applicant whose license to practice pharmacy is currently the subject of any disciplinary proceeding.

The bill enables the Department of Health or the Board of Pharmacy to discipline a pharmacy permittee for interfering or attempting to interfere with the professional judgment of a pharmacist in the performance of his duties.

The bill takes effect upon becoming a law and is traveling with three amendments.

CS/HB 433 will have a fiscal impact on the state which will be covered by application fees. The Department of Health reported the need for one additional FTE. There will be no fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Chapter 465, F.S., regulates the practice of pharmacy by the Board of Pharmacy within the Department of Health. The Board of Pharmacy is currently composed of nine members: two of the members are consumers and the remaining seven members are pharmacists.

Section 465.007, F.S., provides requirements for licensure by examination for persons who wish to practice pharmacy. Applicants must complete the application form and submit to the Department of Health an examination fee no greater than \$100 plus the actual cost to the department for purchase of portions of the examination from the National Association of Boards of Pharmacy or a similar national organization.

Pursuant to s. 465.007(1)(b) and (c), F.S., the Department of Health will examine any applicant wishing to practice pharmacy who the Board of Pharmacy certifies:

- is 18 years of age or older;
- has received a degree from a school or college of pharmacy accredited by an accrediting agency recognized and approved by the United States Office of Education or has graduated from a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, and has also demonstrated proficiency in English by passing both the Test of English as a Foreign Language and the Test of Spoken English; and
- has completed an internship program approved by the board.

In addition, the Board of Pharmacy must certify that a graduate of a foreign school or college of pharmacy has also completed a minimum of 500 hours of supervised work in Florida under a licensed pharmacist and has passed the board-approved Foreign Pharmacy Graduate Equivalency Examination.

Any person who wishes to practice pharmacy in Florida must submit to all the requirements for licensure by examination, including the requirements of s. 465.016, F.S., which specifies grounds for which a pharmacist may be disciplined or an applicant for pharmacy licensure may be refused a license.

The Florida Pharmacy Act does not provide for licensure by endorsement. Licensure by endorsement is a licensing procedure that allows an out-of-state practitioner who holds an active license in a state which has licensing requirements substantially equivalent to, or more stringent than, those in the state in which the practitioner is seeking licensure to obtain a license without meeting all of the licensure requirements for a person who is

obtaining licensure for the first time. Jurisdictions that provide licensure by endorsement procedures for persons to practice pharmacy may participate in the National Association of Boards of Pharmacy's electronic licensure transfer program which enables pharmacists to transfer their existing pharmacy license from one jurisdiction to another through uniform licensure requirements recognized in jurisdictions that are members of the National Association of Boards of Pharmacy. The National Association of Boards of Pharmacy licensure program serves as a clearinghouse that screens pharmacists for disciplinary actions and verifies background information.

Florida and California are the only two states lacking the ability to transfer licensure or issue a license by endorsement. California still administers an examination that is unique to that state. Under Florida law, any pharmacist who is currently licensed in another jurisdiction must retake the national examination before being licensed in Florida. In 1986, the Florida Board of Pharmacy began using the National Association of Boards of Pharmacy [NABPLEX] examination for pharmacy licensure which is the same examination utilized by all other states, except California.

Most major medical professions in Florida that take the same national examination as other states, recognize the grades on such examination for licensure in Florida, except for the field of pharmacy. For instance, medical professions such as medical physicians, osteopathic physicians, podiatric physicians, and nurses provide for full Florida licensure by endorsement.

Florida Retail Federation, Eckerd Drugs and Walgreen Drugs have indicated that there is a "shortage of pharmacists in Florida which has reduced their ability to expand. Employment can be offered to more pharmacists than are available in the state; however, they are unable to go outside of the state to recruit because Florida law does not currently permit endorsement with other states, or even allow license examination scores to be transferred."

Section 465.023, F.S., authorizes the Department of Health or the Board of Pharmacy to revoke or suspend the permit of a pharmacy permittee, and may fine, place on probation, or otherwise discipline a permittee for certain acts. Section 465.026(1)(e), F.S., provides grounds for discipline if a pharmacist or pharmacy permittee interferes with the professional judgment of the dispensing pharmacist when a prescription has been transferred from one pharmacy to another. This provision however does not appear under the "disciplinary action" section in s. 465.023, F.S.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 465.0075, F.S., to provide for licensure by endorsement for a pharmacist who is licensed in another jurisdiction. It provides that applicants must have passed the national examination (NABPLEX), or a similar national examination, not more than 15 years prior to date of the application.

Under s. 465.0075, F.S., the Department of Health must issue a license to practice pharmacy by endorsement to any applicant who has submitted a non-refundable application fee no greater than \$100, and who the Board of Pharmacy certifies has met the following licensure by examination requirements specified in s. 465.007(1)(b) and (c), F.S.:

- is 18 years of age or older;
- has received a degree from a school or college of pharmacy accredited by an accrediting agency recognized and approved by the United States Office of Education or has graduated from a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, and has demonstrated

proficiency in English by passing both the Test of English as a Foreign Language and the Test of Spoken English; and

- has completed an internship program approved by the board.

In addition, a graduate of a foreign school or college of pharmacy must have completed a minimum of 500 hours of supervised work in Florida under a licensed pharmacist and have passed the board-approved Foreign Pharmacy Graduate Equivalency Examination.

The applicant must submit proof of the “active licensed practice of pharmacy” in two of the immediately preceding five years or evidence of successful completion of either board-approved postgraduate training or a board-approved clinical competency examination within the year preceding application. Also, the applicant must have obtained a passing score on the pharmacy jurisprudence portions of the licensure examination, as required by board rule.

The bill defines the “active licensed practice of pharmacy” as the practice of pharmacy by pharmacists, including those employed by any governmental entity in community or public health, and those on the active teaching faculty of an accredited pharmacy school, or has completed an internship meeting the requirements of s. 465.007(1)(c), F.S., within the two years preceding application.

The department may not issue a license by endorsement to any applicant who is under investigation in any jurisdiction for an act or offense that would constitute a violation of chapter 465, F.S., until such time as the investigation is complete. The bill provides that once the investigation is complete, the applicant may be subject to refusal of licensure pursuant to s. 465.016, F.S.

The bill prohibits the department from issuing a license by endorsement to practice pharmacy to any applicant whose license to practice pharmacy has been suspended or revoked in another state or to any applicant who is currently the subject of any disciplinary proceeding in another state.

The bill enables the Board of Pharmacy to discipline a pharmacy permittee for interfering or attempting to interfere with the professional judgment of a pharmacist in the performance of his duties.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 465.0075, F.S., to provide for pharmacy licensure by endorsement. It provides that applicants must have passed the national examination (NABPLEX), or a similar national examination, not more than 15 years prior to date of the application.

The applicant must submit proof of the “active licensed practice of pharmacy” in two of the immediately preceding five years or evidence of successful completion of either board-approved postgraduate training or a board-approved clinical competency examination within the year preceding application. Also, the applicant must have obtained a passing score on the pharmacy jurisprudence portions of the licensure examination, as required by board rule.

The bill defines the “active licensed practice of pharmacy” as the practice of pharmacy by pharmacists, including those employed by any governmental entity in community or public health, or has completed an internship meeting the requirements of s. 465.007(1)(c), F.S.,

within the two years preceding application. It provides certain limitations on licensure by endorsement.

Section 2. Amends s. 465.023(1), F.S., to enable the Department of Health or the Board of Pharmacy to discipline a pharmacy permittee for interfering or attempting to interfere with the professional judgment of a pharmacist in the performance of his duties.

Section 3. Provides an effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. <u>Revenues:</u>	<u>2000-01</u>	<u>2001-02</u>
Department of Health		
400 applications annually @ \$100	\$40,000	\$40,000
(Net of 7% G.R. Service Charge)	(\$2,800)	(\$2,800)
Medical Quality Assurance Trust Fund	\$37,200	\$37,200
2. <u>Expenditures:</u>		
Department of Health		
One-time expenses:		
Medical Quality Assurance Trust Fund	\$ 6,948	\$0
Recurring expenses:		
Medical Quality Assurance Trust Fund	\$25,387	\$33,849
Expenses	6,498	6,498
=====	=====	=====
Total Expenses:		
Medical Quality Assurance Trust Fund	\$38,833	\$40,347
(1 FTE)		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Direct Private Sector Costs -- Endorsement applicants will be subject to a non-refundable application fee of no greater than \$100. The Department of Health estimates that it will process 400 applications @ \$100 each for both FY 2000-2001 and FY 2001-2002.

Direct Private Sector Benefits -- Pharmacists licensed in another state will benefit from the bill's endorsement provisions and may practice in Florida without having to sit for the national licensure examination at the time of application in Florida. Entities employing pharmacists in Florida may benefit from a larger pool of potential employees.

Florida licensed pharmacists may also be able to transfer their licenses to other states, except California, without taking an examination.

Effects on Competition, Private Enterprise and Employment Markets -- The availability of additional pharmacists could benefit a number of the pharmacies located in Florida. Florida Retail Federation has indicated that employment can be offered to more pharmacists than are available in the state. Currently, they are unable to go outside of the state to recruit because Florida law does not permit endorsement with other states or allow license examination scores to be transferred.

D. FISCAL COMMENTS:

According to the Department of Health, the bill establishes a new workload for the Board of Pharmacy requiring review of endorsement applications, verifying licensures in other states, conducting background and disciplinary checks, completing applications through correspondence with applicants, and certifying eligibility for licensure. The revenues generated will compensate the salary required.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This legislation does not provide specific rule-making authority; however, s. 465.005, F.S., provides the Board of Pharmacy authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of the chapter.

C. OTHER COMMENTS:

Committee on Health Care Licensing & Regulation Comments:

The issue of authorizing pharmacy licensure by endorsement was recommended during the 1986 Sunset Review. The Florida Pharmacy Association, in response to the 1986 Sunset Review recommendation that Chapter 465, F.S., be changed to allow for licensure by endorsement, took a position opposing the recommendation. The membership discussed the issue again in 1998, and the position was to reaffirm the 1986 position, and at the same time, included a lack of support for the issue of reciprocity of pharmacists as well.

While it was the opinion of the Department of Health (prior to the 1999 Session) that an amendment could be drafted that would provide for licensure by endorsement while at the same time provide appropriate protection for the public's health, safety, and welfare, the Board of Pharmacy reviewed three draft proposals, and voted to remain neutral on the issue.

At its December 5, 1999 meeting, the Board of Pharmacy voted to support changing the law to provide for licensure by endorsement if the applicant has passed the NABPLEX examination within 15 years prior to application, and meets certain other conditions.

During the 1998 interim, committee staff conducted a review of a number of pharmacy issues of interest to the various concerned groups. One issue was identified by all but one of the responding groups--Florida's lack of reciprocity/endorsement with other states.

According to a majority of respondents, there is no justifiable reason why pharmacists in other states, who have taken the same NABPLEX examination as their counterparts in Florida, should be denied the ability to transfer those scores into this state for licensure. Also, if Florida had a policy of recognition of the grades from the national examination taken in other states, such a policy would improve the opportunities for Florida-educated pharmacists seeking professional opportunities in other states. While the goal would be to provide employment within the state for Florida-educated pharmacists, it should not be a state policy to make it as difficult as possible for such graduates to obtain jobs in other states.

In 1998, the only respondent opposing licensure by endorsement was the Florida Pharmacy Association (F.P.A.). In addition, the association submitted a letter from the Dean of the College of Pharmacy and Pharmaceutical Sciences, Florida A&M University, in opposition to licensure by endorsement. The Dean of the College of Pharmacy at the University of Florida strongly supported licensure by endorsement.

Comments by the Committee on Governmental Rules & Regulations

The Dean of the College of Pharmacy at the University of Florida submitted testimony and a letter to the committee strongly supporting licensure by endorsement.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the January 19, 2000, meeting of the Health Care Licensing & Regulation Committee, a strike-everything amendment was adopted to conform the bill to its Senate companion (CS/SB 168). Subsection (2) of the original bill was deleted which allowed the department to impose conditions, limitations, or restrictions on a license by endorsement if the applicant was on probation in another jurisdiction for an act that would constitute a violation of the Florida Pharmacy Act. An amendment to the strike-everything amendment was adopted to enable the Board of Pharmacy to discipline a pharmacy permittee for interfering or attempting to interfere with the professional judgment of a pharmacist in the performance of his duties.

At the February 22, 2000, meeting of the Committee on Governmental Rules & Regulations, the bill was voted unfavorably and a motion to reconsider the bill was left pending. At the March 8, 2000, meeting, the bill was reconsidered and passed with three amendments.

Amendment 1 - Clarified that a licensure examination similar to NABPLEX must be a nationally recognized examination.

Amendment 2 - Provided that an applicant licensed in another state for more than 2 years prior to the date of application for licensure in this state must have a total of 30 hours of board-approved continuing education for that period.

Amendment 3 - Requires certification of pharmacy technicians, provides for continuing education requirements, and prohibits the employment of non certified pharmacy technicians by a pharmacy after January 1, 2001.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Robert W. Coggins

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:

Staff Director:

Shari Z. Whittier

David M. Greenbaum